

[110] CHAPTER 55.

CITY OF DAVENPORT.

AN ACT to incorporate the city of Davenport.

OF THE BOUNDARIES AND GENERAL POWERS.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Incorporation. That the inhabitants of the town of Davenport in the county of Scott and state of Iowa, be, and they are hereby, constituted a body politic and corporate, by the name and style of the "City of Davenport," and by that name shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure.

SEC. 2. Boundaries. All that district of country embraced within the following limits, and such additions as hereinafter provided, shall be the limits of the boundaries of said city, to wit: "Beginning at the point in the middle of the main channel of the Mississippi river where the western boundary line of the old town of Davenport extended, would intersect the middle of the said main channel, running northward by and along said western boundary line to the north-west corner of said old town; thence eastwardly and along the northern line of blocks numbered on the plat of Le Clair's addition to said town, as blocks number forty-nine, fifty, fifty-one and fifty-two, to the north-east corner of block fifty-two; thence in the same direction across Rock Island street; thence southwardly along the eastern side of said street to Sauk or Second street; thence eastwardly along the northern boundary of said last mentioned street, to where the same if extended, would reach low-water mark on the bank of the Mississippi river; thence at right angles to the last course, to the middle of the main channel of said river, and thence down and along the middle of said main channel to the place of beginning," are hereby declared to be within the boundaries of the said city of Davenport.

SEC. 3. Out-lots included. The tracts of land laid off into town lots and duly recorded as required by law for the recording of "town plats" [111] adjoining said town, or whenever any tract of land adjoining the city of Davenport shall have been laid off or shall hereafter be laid off into town lots, and duly recorded as required by law, the same shall be annexed to, and form a part of the city of Davenport.

SEC. 4. Corporate powers. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, to implead and be impleaded, defend and be defended, in all courts of law and equity, and in all actions whatever; to purchase, receive and hold property, both real and personal and mixed in said city; to purchase, receive and hold property, both real, personal and mixed beyond the city for burial grounds or for other purposes, for the use of the inhabitants of said city; to sell, lease, convey or dispose of property, real, personal and mixed for the benefit of the city; and to improve and protect such property, and to do all other things in relation thereto as natural persons.

ARTICLE II.

OF THE CITY COUNCIL.

SECTION 1. City council. There shall be a city council to consist of a mayor and board of aldermen.

SEC. 2. Aldermen. The board of aldermen shall consist of two members from each ward, to be chosen by the qualified voters for two years.

SEC. 3. Qualification. No person shall be an alderman, unless at the time of his election a citizen of the United States, six months a resident of the state of Iowa, over the age of twenty-one years and resident three months within the limits of said city. If any alderman shall after his election remove from the ward for which he is elected in said city, his office, shall be thereby vacated. At the first meeting of the city council the aldermen shall be divided by lot into two classes, the seats of those of the first class shall be vacated at the expiration of the first year; and of the second class, at the expiration of the second year, so that one-half of the board shall be elected annually.

SEC. 4. Council to be judge of election and qualification, etc.—vacancies. The city council shall judge of the qualifications, [112] elections and returns of their own members and shall determine all contested elections. A majority of the city council shall constitute a quorum to do business, but a smaller number may adjourn from time to time and compel the attendance of absent members, under such penalties as may be prescribed by ordinance. They shall have power to determine the rule of its proceedings, punish their members for disorderly or contemptuous conduct, and with the concurrence of two-thirds of the members elected, expel a member. They shall cause to be kept a journal of their proceedings and may from time to time publish the same, and the yeas and nays when demanded by any member present shall be entered on the journal. All vacancies that shall occur in the board shall be filled by election.

SEC. 5. Oath of office—tie—meetings of council. The mayor and each alderman before entering upon the duties of their respective offices, shall take and subscribe an oath or affirmation "that they will support the constitution of the United States, and of the state of Iowa, and that they will discharge the duties of their office to the best of their knowledge and ability." Whenever there shall be a tie in the election of an alderman the judges of the election shall certify the same to the mayor, who shall determine the same by lot in such manner as shall be determined by ordinance. There shall be twelve stated meetings of the city council in each year, at such times and places as may be prescribed by ordinance, and for such special meetings as they may deem necessary.

ARTICLE III.

OF THE CHIEF EXECUTIVE OFFICER.

SECTION 1. Mayor—who eligible—vacated. The chief executive officer of the city shall be a mayor, who shall be elected by the qualified voters of the city, and shall hold his office for one year, and until his successor shall be elected and qualified. No person shall be eligible to the office of mayor, who shall not be a citizen of the United States a resident of the city one year next preceding his election, and over the age of twenty-one years; and if any mayor shall during the time for which he shall have been [113] elected, remove from the city, or be absent therefrom more than two months at any one time, his office shall become thereby vacated.

SEC. 2. Tie—lot—vacancy. When two or more persons shall have an equal number of votes for mayor, the judges of the election shall certify the same to the city council, who shall proceed to determine the same by lot, in such manner as may be provided by ordinance, whenever an election shall be contested for mayor, the city council shall determine the same in such manner as may be prescribed by ordinance; and whenever any vacancy shall happen in the office of mayor, it shall be filled by an election, and until such an election shall be had, it shall be competent for the board of aldermen to elect one of their number president, who shall be mayor pro tem.

ARTICLE IV.

OF ELECTION.

SECTION 1. Elections—canvass—notice—qualify. On the first Saturday of April next an election shall be held in each ward of said city, for one mayor for said city, two aldermen for each ward, and forever thereafter on the first Saturday of April, of each year, there shall be an election held for one mayor for the city, and an alderman for each ward. The city council shall before each annual or special election, appoint three electors in each ward of said city to act as judges and clerks of said election, who shall take the same oath, conduct the elections in the same manner as are now provided or hereafter may be provided by law for holding and conducting elections for county officers, said judges and clerks shall return a certified statement of the persons voted for as aldermen and mayor in their respective wards within three days to the clerk of said city, and a majority of said judges shall meet at said clerk's office on the Monday following, and canvass the number of votes cast for mayor, and certify the number of votes cast, who for, and the person elected mayor (provided there has been a choice) to the clerk of said city. The clerk shall receive said returns, certificates and poll books, and preserve the same among the papers of his office, and shall give the person and persons receiving [114] the highest number of votes for mayor and aldermen, a notice of their election, within two days after the receipt of the returns aforesaid, and such person receiving such notice of his election, as mayor or aldermen, shall within five days after the receipt of such notice, take the oath prescribed in this act for the office to which he may have been elected, and a neglect or refusal to take such oath and file the same with the clerk shall be taken as a refusal of said office, and the city council may proceed to fill such vacancy as provided for in this act.

SEC. 2. Qualification of voters. All resident citizens over the age of twenty-one years, who are entitled to vote for state officers, and who shall have been actual residents of said city ninety days next preceding said election, shall be entitled to vote for city officers; provided, that said electors shall give their votes for mayor and aldermen in the wards in which they respectively reside; and for voting illegally at any election herein provided for, shall be punished in the same manner and with like effect, as is provided under the general laws of the state of Iowa for illegal voting.

ARTICLE V.

OF THE LEGISLATIVE POWERS OF THE CITY COUNCIL.

SECTION 1. Taxes—may correct assessment—marshal to collect—notice—distrain—notice in newspaper—sale of lots, etc.—deed. The city council shall have power and authority to levy and collect taxes upon all taxable property, real, personal and mixed, within the city, not exceeding one-half per cent. per annum upon the assessed value thereof, which value shall be ascertained by the assessor of said city; to provide by ordinance the time for taking such assessment, when the same shall be returned to the city clerk, and also provide for the assessing of property that may have been omitted or overlooked or otherwise not returned by said assessor, also the time when said clerk shall make out and deliver to the marshal of said city, a copy of said assessment together with the tax due or assessed, which said copy, shall be sealed with the common seal of said city, with a warrant for the collection of the taxes so assessed, signed by the mayor, and clerk of said city. The city council shall have power to correct or [115] equalize any erroneous or

injudicious assessment. The marshal shall be the collector of all taxes assessed as aforesaid he shall upon receiving a copy of such assessment and warrant as aforesaid, make personal demand of every resident charged with tax if to be found within said city, or leave a written notice of the amount of such tax at his or her place of abode, and shall put up at least one written notice in each ward of said city, that if the taxes are not paid within twenty days thereafter, the same will be collected by sale of property of delinquents; at the expiration of which twenty days said marshal may, and he is hereby authorized by distress and sale of personal property of such delinquent or delinquents, as constables on execution, to collect said tax or he may after the expiration of said twenty days if said tax shall remain unpaid, give notice by publication in one of the newspapers published in said city for six consecutive weeks, stating the amount of said tax costs and printer's fee, and the number of the lot, or the description of the piece of land or property on which the same are due, and the owner's name if known, and that the said lot, piece of land or property will be sold on the day and at the place to be mentioned in said notice, unless payment be made of the taxes, costs and printer's fee on or before said day of sale, and if such payment should not be made according to said notice, then said marshal shall proceed and sell the same in accordance with said notice, for said amount due, to the bidder who will take the least quantity of the lot or piece of land or property, off from the side, which said marshal shall designate, or the whole if no bid for a less quantity, and he shall give to the purchaser thereof a certificate stating the description of the piece of land or the number of the lot or the portion thereof or the property purchased and price paid therefor and the day of sale, and at the expiration of two years thereafter, if the owner or claimant shall not redeem the same by paying the amount for which the same was sold together with fifty per cent per annum to the purchaser or to the city treasurer for said purchaser's benefit, said purchaser or his heirs or assigns shall be entitled to a deed therefor, and the mayor of said city shall on demand and the presentation of said certificate make, execute and deliver to the holder or owner of such certificate a deed for said property in said certificate mentioned, which when acknowledged, or proven and recorded, as other deeds are acknowledged and proven, shall be good and valid in law and equity, to pass a valid title to such lot, piece of lot, ground or property, and shall be *prima facie* evidence in all courts that all things have been complied with, nor shall the same ever be inquired into until the amount for which said property or real estate together with the interest aforesaid shall have been tendered to the holder thereof or deposited in the city treasury for his or their benefit.

SEC. 2. Clerk, treasurer, marshal, assessor, etc.—bonds—oath—schools—may borrow money—vote—council to make regulations—to open, alter, grade and pave streets and alleys—wards—improve the navigation of Mississippi river—licenses—gaming and other disorderly houses—measuring, weighing, and inspecting—census—regulate elections—fees of officers—shooting, racing, etc.—police—powers—style of ordinances—to be published in newspaper, or posted up. The city council shall have power to provide by ordinance from time to time for the election of a clerk, treasurer, assessor, marshal, and one or more street commissioners, by the electors of said town, by causing one or more polls to be opened in said city for said purpose; and they may appoint such other officers as they may deem necessary, or provide for their election by the voters of said city at the same time and place that the above officers are elected, their tenure of office shall be one year, and said city council before the election or appointment of any officer aforesaid, shall have power to require of any or all of them, bonds with penalty, and security, for the faithful performance of their respective duties, as may be deemed expedient, and to

take an oath for the faithful performance of the duties required of them in their respective offices, before entering upon the discharge of the same, to establish, support and regulate common schools, to appropriate money, and provide for the payment of the debts and expenses of the city, to borrow money on the credit of the city, to be used for such purposes as they may think conducive to the welfare thereof. In all cases where the city council may borrow money they shall provide for the payment of the interest thereof, by setting apart a portion of the ordinary revenue, and collecting it for that purpose the question of borrowing money shall be submitted and approved by a majority of the tax payers of said city: provided, that no debt shall be contracted that the interest per annum in any one year due thereon, shall exceed one-half of the revenue derived from tax on the real estate and [117] personal property within said city. To make regulations to prevent the introduction of contagious diseases into the city, to make quarantine laws for that purpose, and enforce the same within five miles of the city; to establish hospitals, and make regulations for the government of the same. To make regulations to secure the general health of the inhabitants; to declare what shall be a nuisance, and to prevent, remove or abate the same; to tax dogs or prevent them from going at large; to provide the city with water; to erect hydrants and pumps in the streets for the convenience of the inhabitants; to open, alter, abolish, widen, extend, establish, grade, pave, or otherwise improve and keep in repair streets, avenues, lanes and alleys; to establish, erect and keep in repair bridges; to divide the city into wards, alter the boundaries thereof, and erect additional wards as the occasion may require; to provide for lighting the streets, and erecting lamp posts; to establish, support and regulate night watches; to erect market houses, establish markets and market places, and provide for the government and regulation thereof; to provide for the erection of all needful buildings for the use of the city; to provide for the enclosing, improving and regulating all public grounds belonging to the city; to improve and preserve the navigation of the Mississippi river within the limits of the city; to erect, repair and regulate public wharves and docks; to regulate the erection and repair of private wharves, and the rates of wharfage thereat; to license, tax, and regulate auctioneers, transient merchants, retailers and grocers, taverns, ordinaries, hawkers, pedlars, brokers, pawnbrokers and money changers; to license, tax, and regulate hackney carriages, wagons, carts and drays, and fix the rates to be charged for the carriage of persons, and for the wagonage, cartage, and drayage of property; to license and regulate porters, and fix the rates of portage; to license, tax and regulate theatrical and other exhibitions, shows and amusements; to tax billiard tables, restrain, prohibit and suppress tipling houses, dram shops, gaming houses, bawdy and other disorderly houses; to provide for the prevention and extinguishment of fires, and to organize and establish fire companies; to regulate or prohibit the erection of wooden [118] buildings in any part of the city; to regulate the fixing of chimneys, fix the flues thereof; to regulate the storage of gunpowder, tar, pitch, rosin, and other combustible materials; to regulate and order parapet walls and partition fences; to establish standard weights and measures, and to regulate the weights and measures to be used in the city, in all cases not otherwise provided for by law. To provide for the inspection and measuring of lumber and other building materials, and for the measurement of all kinds of mechanical work; to provide for the inspection and weighing of hay and stone coal, the measuring of charcoal, fire wood and other fuel to be sold or used in the city; to provide for, and regulate inspection of tobacco, beef, pork, flour, meal and whiskey, in barrels; to regulate the weight, quality and price of bread to be sold and used in the city; to provide for taking the enumeration of the inhabitants of the city; to regulate the election of city officers, and to provide for the removing from office any

person holding an office created by ordinance; to fix the compensation of all city officers, and regulate the fees of jurors, witnesses and others, for services rendered under this act or any ordinance; to prohibit the discharging of firearms, and the racing and immoderate running or driving of horses, drays, carts, carriages, wagons, or other vehicles, in said city; to regulate the police of the city; to impose fines, forfeitures, and penalties for the breach of any ordinance, and provide for the recovery and appropriation of such fines and forfeitures, and the enforcement of such penalties, and the licensing and regulating retailers of spirituous and vinous liquors, in said city.

The city council shall have power to make all ordinances which shall be necessary and proper for carrying into execution the powers specified in this act, so that such ordinances be not repugnant to, or inconsistent with the constitution of the United States and of the state of Iowa.

The style of the ordinances of the city shall be "Be it enacted by the city council of the city of Davenport."

All ordinances passed by the city council, shall within one month after they shall have been passed, be published in some newspaper published in said city, or a certified copy [119] thereof, signed by the clerk, posted up at one or more public place in each ward of said city, and shall not take effect until ten days after such publication, or posting up, as above provided for. All ordinances, by-laws, rules and regulations, shall be recorded by the clerk of the city in a book to be kept for that purpose, with a certificate to each, that the same has been published in some newspaper published in said city, or a copy thereof posted in each ward thereof, and that the same is a correct copy of the original as passed by the city council; and the said book, or a copy of any bye-law, ordinance, rule or regulation, with the certificate of the clerk, of the publication aforesaid, certified by the said clerk to be a true copy of such by-law, ordinance, rule or regulation, shall be sufficient authentication to allow the same to be read or received in evidence, in all actions and suits, in any court in this state, or when said by-laws, ordinances, rules, and regulations, shall be published in book or pamphlet form, and purporting to be printed and published by authority of the corporation, the same shall be received in evidence in all courts and places, without further proof.

ARTICLE VI.

OF THE MAYOR.

SECTION 1. Mayor to preside at meetings. The mayor shall preside at all meetings of the city council, and shall have a casting vote and no other, in case of the non-attendance of the mayor at any meeting, the board of aldermen shall appoint one of their own members chairman who shall preside at the meeting.

SEC. 2. Special meetings. The mayor or any two aldermen may call special meetings of the city council, by notifying each alderman, mayor and clerk of said city, of the time and place of meeting, and the business to be transacted at such meeting; and no other business than that designated in said notice, shall be transacted.

SEC. 3. Mayor to enforce laws, etc., and prosecute and recommend, etc. The mayor shall at all times be active and vigilant in enforcing the laws and ordinances for the government of the city; he shall inspect the conduct of all subordinate officers of said city, and cause negligence and positive violation of [120] duty to be prosecuted and punished; he shall from time to time communicate to the aldermen such information, and recommend all such

measures, as in his opinion, may tend to the improvement of the finances, the police, the health, security, comfort and ornament of the city.

SEC. 4. Mayor ex-officio a justice of the peace—jurisdiction—civil and criminal cases—fees. He shall by virtue of his office be a justice of the peace for said city, and as such shall be a conservator of the peace in the said city, and shall have power and authority to administer oaths, issue writs and processes under the seal of the city, to take depositions, the acknowledgments of deeds, mortgages and all other instruments of writing, and certify the same under the seal of the city, which shall be good and valid in law, he shall have exclusive jurisdiction in all cases arising under the ordinances of the corporation, and concurrent jurisdiction with all other justices of the peace in all civil and criminal cases within the county of Scott, arising under the laws of the state; and shall receive the same fees, and compensation, for his services in similar cases. He shall also have such jurisdiction as may be vested in him by ordinance of the city in and over all places within five miles of the boundaries of the city, for the purpose of enforcing the health, quarantine ordinances and regulations thereof and the protection of cemeteries or grave yards and enclosures.

SEC. 5. Bond—salary. He shall before entering upon the discharge of the duties of his office give bond and security to be approved of, and filed with the clerk of said city, in the same penalty and with like conditions as are required of justices of the peace now by law, and the same may be prosecuted for any breach in the same manner and with the like effect, as is required by law for similar cases under the laws of Iowa, he shall receive for his services as mayor of said city such salary as shall be fixed by an ordinance of the city.

SEC. 6. Omission of duty or misconduct. In case the mayor shall at any time be guilty of a palpable omission of duty, or shall wilfully and corruptly be guilty of oppression, mal-conduct or partiality, in the discharge of the duties of his office, he shall be liable to be indicted in the district court of Scott county, and on conviction he shall be fined in a sum not exceeding two hundred dollars, for the use of said city, and the court shall have power [121] or on the recommendation of the jury trying said indictment, to add to the judgment of the court that he be removed from office.

SEC. 7. Process—duties and liabilities of marshal. All processes or writs issued by the mayor may be either a warrant for the arrest of the person of the offender, or writs in the usual form, directed to the marshal of said city, who shall serve and return the same as commanded in said warrant or writs, and in case of a warrant to bring the offender forthwith before said mayor, the marshal of said city shall have the same authority, and may do and perform the same duties, and shall be subject to the same liabilities in the service and return of all such writs and process issued by, and in attending the trial before such mayor, for recovery of fines and penalties, for the breach or violation of any of the by-laws, ordinances, rules or regulations of said corporation, that constables have in their respective counties.

ARTICLE VII.

PROCEEDINGS IN SPECIAL CASES.

SECTION 1. Private property—jury—owners petition, streets, etc., may be opened. When it shall be necessary to take private property for opening, widening or altering any public street, lane, avenue, block, lot or alley, the corporation shall make a just compensation therefor, to the person whose property is so taken; and if the amount of such compensation cannot be agreed on, the mayor shall cause the same to be ascertained by a jury of six

disinterested freeholders of the city. When three-fourths of all the owners of all the property on a street, lane, avenue, block or alley, proposed to be opened, widened or altered, shall petition therefor, the city council may open, widen or alter such street, lane, avenue, block or alley, upon conditions to be prescribed by ordinance, but no compensation shall be made in such case to those whose property shall be taken for the opening, widening or altering such street, lane, avenue, block or alley, nor shall there be any assessment of benefits or damages that may accrue thereby to any of the petitioners.

SEC. 2. **Jury to assess—report to mayor.** All jurors impanelled to inquire into the amount of benefits or damages, which shall happen to the owners of [122] property proposed to be taken for opening, widening or altering any street, lane, block or alley, shall first be sworn to that effect, and shall return to the mayor, their inquest in writing signed by each juror; in ascertaining the amount of compensation for property taken for the above purposes, the jury shall take into consideration the benefit, as well as the injury, happening by such opening, widening or altering aforesaid.

SEC. 3. **Mayor may set aside the inquest.** The mayor shall have power for good causes shown within ten days after an inquest shall have been returned to him as aforesaid, to set aside and cause a new inquest to be made, but he shall have power to set the same aside as aforesaid but once, for each party, when the city council shall still determine whether said street, lane, avenue, block or alley shall be opened, widened or altered.

SEC. 4. **Special tax.** The city council shall have power by ordinance to levy and collect a special tax on the holders of the lots in any street, lane, avenue, alley or block, or the side of a block fronting or lying on an alley, or part of any street, lane, avenue or alley, according to their respective fronts owned by them for the purpose of paving and grading the sidewalks and lighting such streets, lane, avenue, or alley or parts thereof.

ARTICLE VIII.

MISCELLANEOUS PROVISIONS.

SECTION 1. **Road district.** The inhabitants of the city of Davenport are hereby exempted from working on any road beyond the limits of the city, and from paying any tax to procure laborers to work upon the same, and said city is hereby constituted a road district, with powers conferred on any one or more street commissioners as the city council may appoint or provide for the election of, as are now conferred under the laws of the state of Iowa upon supervisors of roads and highways, and the said city council shall have the same authority to provide for work in the corporate limits of said city, on the streets, lanes, alleys, public grounds, wharves, landings, avenues and highways as are now by law or hereafter may be conferred [123] on the several boards of county commissioners or such other tribunal as the state may provide and clothe with such authority, and they shall provide for the collection and appropriation of such work by ordinance.

SEC. 2. **Labor on streets.** The city council shall have power for the purpose of keeping the streets, lanes, avenues and alleys in repair, to require every male inhabitant in said city over twenty-one years of age to labor on said streets, lanes, avenues and alleys not exceeding three days in each and every year and any person failing to perform such labor when duly notified by the street commissioner shall forfeit and pay the sum of one dollar per day for each day so neglected or refused.

SEC. 3. **Punishment for offences.** The city council shall have power to provide for the punishment of offenders by imprisonment in the county jail

or work house, or city prison, in all cases where such offenders shall fail or refuse to pay the fines and forfeitures which may be recovered against he, she or them.

SEC. 4. Publish statement of monies, etc. The city council shall cause to be published or posted up in each ward of said city annually, twenty days before each annual election for mayor, a full and complete statement of all moneys received and expended by the corporation during the preceding year, and on what account received and expended, showing the entire indebtedness of said city, and also the amount of road work, from whom received, money paid instead of work, the disposition of said work and money.

SEC. 5. Provide books—to keep journal—keep record of marshal's returns—duty of marshal—mayor to keep record. The city council shall provide well bound books for their own use, and for the use of the officers under their city charter. They shall cause their clerk to keep a journal of the proceedings of their meetings, which shall be signed by said clerk and the presiding officer of each meeting. He shall also keep a record of the returns of the marshal, in which he shall record the number of lot, price of ground or description of land or property sold by him for taxes due on assessment, the amount for which it was sold, the time when sold, the purchaser's name and the time of redemption, when redeemed, for what amount and the person to whom, and when deeded. And said marshal shall so make his return of the tax lists of each year, as to enable said clerk to state the [124] above facts in said delinquent tax book. A book to record the acts and reports of the street commissioners, and the name, age and residence of deceased persons buried in the city cemetery, and when such person became deceased, and of what disease such person died, if known; also an order book stating the amount allowed each person out of the city treasury, the name of the person to whom allowed, when and by whom drawn; they shall also provide the mayor and his successor in office with a record or docket in which he shall record all the proceedings had before him as such mayor, for the violation of ordinances, his judgments, and the reports required to be made to him as such mayor and justice of the peace. All of the books above provided for shall be open for the inspection of the inhabitants of said town at all reasonable hours, free of expense, tax or fee.

SEC. 6. Suits how prosecuted. All suits, actions and prosecutions instituted, commenced or brought by the corporation hereby created, shall be instituted, commenced and prosecuted in the name of the city of Davenport, and in cases of warrants the same may be issued for violations of the ordinances, by-laws, rules and regulations of said city without being predicated or based upon affidavit.

SEC. 7. Filling vacancies. The city council shall have power to provide by ordinance for filling of temporary vacancies in any subordinate office, where the same shall occur from sickness, absence from the city or inability on the part of any officer, or sudden death, until the same can be filled as is provided by ordinance, or another elected.

SEC. 8. Act to be published—vote. The mayor and aldermen of the town of Davenport shall cause this act to be published in each of the papers of said town, or they may provide for the publication and distribution of one hundred copies among the inhabitants of said town; and ten days after the publication or the distribution of the copies herein provided for, for an election for or against the adoption of this charter; such election shall be holden in some public place therein, where all the voters may attend during the day between the hours of 10 a. m. and 4 p. m. and vote by ballot "for new charter" or "against new charter," and if "for new charter" shall have

a majority of [125] the votes cast "for" and "against," this charter shall immediately take effect as a law, but if a majority of the votes given shall be against the adoption of said charter, then this act to be of no effect.

SEC. 9. **Ordinances—wards—fines, etc.—acts not invalidated.** All ordinances and resolutions passed by the mayor and aldermen of the town of Davenport, shall remain in force until the same shall have been repealed by the city council of Davenport. The boundaries of the wards of the city shall (until otherwise changed by the city council of the city of Davenport) be the same as those heretofore of the town of Davenport, all actions, fines, penaltines and forfeitures which have accrued to the mayor and aldermen of the town of Davenport, shall be vested in, and prosecuted by the corporation hereby created. All property, real, personal and mixed heretofore belonging to the mayor and aldermen of the town of Davenport, shall be and the same is hereby declared to be vested in the corporation hereby created. This charter shall not invalidate any act done by the mayor and aldermen of the town of Davenport nor divest them of any right which may have accrued to them prior to the passage of this act, but the same shall inure to and be enjoyed by the corporation hereby created.

SEC. 10. **Appeals—jurisdiction of marshal—marshal disqualified.** Appeals shall be allowed from decisions in all cases arising under the provisions of this act or any ordinance passed in pursuance thereof, to the district court of Scott county. Any and every such appeal shall be taken and granted in the same manner and with like effect as appeals are taken from, and granted by justices of the peace to the district court, under the laws of this state. The city marshal or any officer authorized to execute writs or other process issued by the mayor, shall have power to execute the same any where within the limits of Scott county, and shall be entitled to the same fees for traveling as are allowed to constables in similar cases; and in case of the interest, inability or disqualification of the marshal to act in any station or position hereby created in this act, the mayor shall have authority to depute such person as he may think proper, by writing on the process to be served or executed, that such [126] person is so deputed, who shall be vested with all the power and authority of such marshal, for the time being.

SEC. 11. **Act declared public—repeal.** This act is hereby declared to be a public act, and may be read in evidence in all courts of law and equity in this state without further proof. All acts or parts of acts coming within the provisions or perview of this act, or contrary to, or inconsistent with its provisions on the taking effect of this charter, are hereby repealed.

SEC. 12. **Sign and file ordinances, etc.** The mayor and clerk shall sign all by-laws and ordinances passed by said corporation, and the same shall be carefully filed and preserved by the clerk. All bills, bonds, notes, drafts, or contracts, ordered by said corporation shall be signed by the mayor and attested by the clerk; and all bills, bonds, notes, drafts or contracts so signed and attested, and in case of bonds or contracts under seal, sealed with their common seal, shall be valid and binding on said corporation, in law and equity, in every court in Iowa.

SEC. 13. **Service of process.** The service of all process against said city of Davenport, shall be by leaving with the mayor, or in his absence, with the clerk, a certified copy thereof, and in case of subpoena in chancery, a certified copy of the bill also.

SEC. 14. **Aldermen to receive no compensation.** No alderman shall receive any compensation for his services as such, for serving on committees created by the city council, nor hold any office or station under this charter unless an ordinance providing for such service and compensation, and the amount of such compensation shall have been adopted by said city council, and sub-

mitted to the voters of said city, and a majority of the votes cast are in favor of the same; but they shall be exempt from the three days work on the streets, side-walks and highways herein provided for, and be eligible to act as judges and clerks of elections under this charter.

SEC. 15. Failing to hold election—failure to work no forfeiture. Any failure to hold any election or expression of opinion provided for under this charter, shall not operate as a forfeiture thereof, but in case the mayor and aldermen of the town of Davenport failing to provide for the election or vote to be had (here in provided for) by them, the same may be holden on any day thereafter, and the said mayor and aldermen of said town shall see that due notice is given, and the [127] election or vote had which may have been neglected or omitted to be held or had, in this act required of them. And in case of the failure or neglect after this charter shall take effect of the city council, at any time, to hold or cause to be held an election or vote to be had which may be required of them, the same shall work no forfeiture of this charter; but such election or vote may be had at some future time thereafter as may be provided for by said city council, nor shall the office of mayor, alderman nor any other office become vacant by such failure; but the incumbent of such office, if otherwise qualified, shall continue and be entitled to all the rights and privileges of said office, and exercise the same until his successor shall be duly elected or appointed and qualified.

Approved, February 5, 1851.

CHAPTER 56.

RIGHT OF WAY.

AN ACT to grant the right of way to the "Iowa Western Rail Road Company."

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Right of way. That there is hereby granted to the "Iowa Western Rail Road Company," and to their representatives, the right of way, one hundred feet wide, for their rail road from Davenport, in Scott county, by the way of Muscatine, in Muscatine county, to Oskaloosa, in Mahaska county.

SEC. 2. How obtained—proprietor may give consent in writing—refusal; sheriff to summon jury—time and place—panel—damages—report—appeal—shall not delay work. That in obtaining the right of way for their said rail road, over and across the lands of individual proprietors, the said company and their representatives may proceed in the manner following: that is to say, the grant of such right of way from individual owners resident of the county in which the land is situated, or who have agents or guardians resident as aforesaid, may be obtained in writing over the hand and seal of such proprietor, or of his agent or guardian, resi- [128] dent as aforesaid, and neither acknowledgement nor recording shall be necessary to the validity of such grant: and if the owner of any land over which said road may be located, shall refuse to grant the right of way for said road through his premises, notice may be given by either party, to the sheriff of the county in which said land may be situated, whose duty it shall be, within ten days thereafter, to summon eighteen freeholders of his county, who are not interested in a like question, to appear on the premises, and he shall give the parties notice of the time and place of the meeting. When so assembled, if the said freeholders do not all appear the sheriff shall summon others to make up the num-